IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

Crl.Rev.Pet.No. 928 of 1999

CRL.A.256/1997 OF VTH ADDL.SESSIONS COURT, ERNAKULAM DTD. 05/07/1999.
CC.558/1992 OF JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI DTD. 27/09/1997.

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REVISION PETITIONERS/APPELLANTS/ACCUSED:

1. **REVI, S/O. KUTTY, AGED 44 YEARS, VELIYATHU THARA VEETTIL, SOUTH PUTHUVAIPPUKARA, PUTHUVYPPU VILLAGE.**

2. **LEELA, W/O. RAVI, VELIYATHU THARA VEETTIL, SOUTH PUTHUVAIPPUKARA, PUTHUVYPPU VILLAGE.**

BY ADV. SRI.A.X.VARGHESE.

RESPONDENT:

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.R. SIVAKUMAR.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/07/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY, J.

Crl.R.P. NO. 928 of 1999

Dated this the 27th day of July, 2007

Order

Revision petitioners herein were accused of offences punishable under sections 323, 324, 326, 427 and 34 of the Indian Penal Code. Trial court found them guilty under section 323 and 326 read with section 34 of the Indian Penal Code. They were convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- under section 326 IPC and to undergo rigorous imprisonment for one month for offence under section 323 IPC. The terms of sentence were allowed to run concurrently. The appellate court confirmed the sentence on the first accused and conviction on the second accused was reduced to three months' imprisonment under section 326. Conviction and sentence under section 323 was confirmed.

2. PW1 was the complainant and PW4 was an independent eye witness. PW4 was a school going student. He was examined after satisfying that he is able to give evidence. The allegation was that both accused persons,

husband and wife came back from behind with iron rods in their hands and first accused pulled PW1 down and when PW1 fell down, the first accused kicked on her chest. It has also brought out from her testimony that the second accused thereupon with MO1 beat on her forehead and she sustained injury on the left forehead. First accused also beat on her both knees with MO2 iron rod. She sustained fracture of the bone of her right knee. She cried aloud. On hearing the cry, people gathered and accused ran away. PW4 deposed that he was coming after purchasing sweets. He saw the incident and he has deposed about the overt acts committed by both accused persons. Their evidence is supported by Ext.P2 wound certificate issued by PW7 doctor. He noted a contusion with haematoma on the left side of the forehead and tenderness over the front of the right knee. She sustained fracture on the patella of the right knee. PW10 is the doctor attached to the Government Hospital, Ernakulam who issued Ext.P8 discharge certificate which would show that PW1 had fracture on the right patella bone. The discharge certificate also shows that patellactomy was done and patella bone was removed. It

shows that PW1 sustained grievous injury on the right knee and also another injury on her forehead. Medical evidence fully corroborate the oral evidence. Other circumstances against the accused was that in the wound certificate, the names of both accused persons were mentioned. That shows that immediately on reaching the hospital also, the names of the accused were mentioned and there is no concoction. First information statement also gives the same story. On these circumstances, the trial court convicted both of them with the aid of section 34. Appellate court reduced the punishment of A2 because of two factors. One is: she was a woman and, secondly, as a result of the blow inflicted by him, there was only injury on the forehead, but, they were guilty and equally responsible with the aid of section 34. I see no ground to interfere in the conviction entered by the courts below. However, since the incident happened in 1992 and considering the facts and circumstances of the case, conviction of first accused as one year imprisonment is reduced to six months with a fine of Rs.1,000/- in default to undergo imprisonment for another three months. Patella of PW1 was lost. We have to look

into the injury also. Punishment should commensurate with the offence. Second accused cannot escape from punishment merely because she is maintaining children. Maximum leniency was shown by the appellate court. PW1 was immobilized for more than three months because of the fracture on the patella.

With that modification, the revision petition is allowed.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

Crl. R.P. No. 928/1999

Order

Dated:27th July, 2007